

Congress of the United States
Washington, DC 20515

September 29, 2020

The Honorable Seema Verma
Administrator
Centers for Medicare and Medicaid Services
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Dear Administrator Verma,

We write to ask the Centers for Medicare and Medicaid Services (CMS) to assure Congress that all state Medicaid programs have fully adopted certain health care protections for juveniles involved in the justice system that were enacted in the *Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act of 2018*. Based on legislation we led in the Senate and House of Representatives, the *At-Risk Youth Medicaid Protection Act*, this provision allows a young person who is otherwise eligible for Medicaid to continue health care coverage immediately following release from the juvenile justice system. We urge CMS to work with states to assure compliance with the law, and to provide guidance as needed.

The first section of the *SUPPORT for Patients and Communities Act*, Section 1001, prohibits states from terminating, and permits states to suspend, Medicaid eligibility for enrollees under 21 years of age who become involved in the criminal justice system. States also are required to redetermine those enrollees' Medicaid eligibility before their release and restore their coverage upon release if they are eligible. Furthermore, states are required to process Medicaid applications submitted by or on behalf of juvenile enrollees who are in public institutions and who were not previously enrolled in Medicaid and ensure that Medicaid coverage is provided when they are released if they are found to be eligible. In short, Section 1001 aims to ensure that justice-involved youth are able to access the health care they need as soon as they need it once they are released from incarceration.

Ensuring timely Medicaid coverage for justice-involved youth is essential to maintaining continuity of care and supporting their health and wellbeing. The Medicaid and CHIP Payment and Access Commission reported in 2018 that juveniles involved in the justice system have high rates of tuberculosis, dental problems, sexually transmitted infections, and mental health disorders.¹ By some estimates, more than two-thirds of justice-involved youth have a mental

¹ <https://www.macpac.gov/wp-content/uploads/2018/07/Medicaid-and-the-Criminal-Justice-System.pdf>

health or substance use disorder. The Substance Abuse and Mental Health Services Administration (SAMHSA) notes the importance of connecting previously incarcerated individuals to health care providers who specialize in mental and substance use disorders to maximize the likelihood of recovery and decrease risks for re-incarceration, emergency department use, and hospitalization.² In recognition of the need to close the gap in access to behavioral health services among justice-involved youth, Congress included this provision in the *SUPPORT for Patients and Communities Act*, to be effective one year after enactment on October 24, 2018.

According to recent surveys of state Medicaid programs, the vast majority of states already suspend rather than terminate Medicaid enrollees who become incarcerated and additional states indicated that they intended to implement suspension policies in fiscal year 2020.³ However, this information is not disaggregated by age so we do not know definitively if all states suspend eligibility for juveniles. We seek assurance that justice-involved youth who are eligible for Medicaid coverage do not face delays that could undermine access to care, leaving these individuals particularly vulnerable in the midst of an ongoing and deadly pandemic.

In addition to monitoring compliance with Section 1001, CMS can play a critical role in supporting states' implementation in a manner that best supports the health and wellbeing of young people. This includes agency guidance to state Medicaid programs that leverages the lessons from successful state models that connect the formerly incarcerated with medical care, including through data exchanges that link state Medicaid agencies with prison release systems, pre-release communication between primary care providers and incarcerated individuals, specialized training for community health workers, and health homes that provide social supports.⁴ These models present opportunities for successful reentry programs; thus we urge your agency to consider guidance, in coordination with SAMHSA's specialized work for those with mental health and substance use disorders, that both fully effectuates the law and promotes its greatest effectiveness.

As such, we request answers to the following questions no later than October 30, 2020:

1. How many states are complying with Section 1001 of the *SUPPORT for Patients and Communities Act*? Which, if any, states are not in compliance?
2. What is CMS doing to assure continued compliance and evaluate state implementation?
3. If any states are not in compliance, what difficulties have they indicated as barriers to implementation?
4. Has CMS considered issuing guidance to support state best practices?

² <https://store.samhsa.gov/product/Principles-of-Community-based-Behavioral-Health-Services-for-Justice-involved-Individuals-A-Research-based-Guide/SMA19-5097>

³ <https://www.kff.org/report-section/a-view-from-the-states-key-medicaid-policy-changes-eligibility-and-premiums/>

⁴ <https://www.commonwealthfund.org/publications/issue-briefs/2019/jan/state-strategies-health-care-justice-involved-role-medicaid>

By assuring compliance and providing thorough guidance with best practice care models, the agency can facilitate access to needed care and support the successful reentry formerly incarcerated youth into the community. We thank you for your attention to this important work.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Murphy".

CHRISTOPHER S. MURPHY
United States Senate

A handwritten signature in blue ink, appearing to read "Tony Cardenas".

TONY CÁRDENAS
Member of Congress

A handwritten signature in blue ink, appearing to read "C. A. Booker".

CORY A. BOOKER
United States Senate

A handwritten signature in blue ink, appearing to read "H. Morgan Griffith".

H. MORGAN GRIFFITH
Member of Congress